

Crotty, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

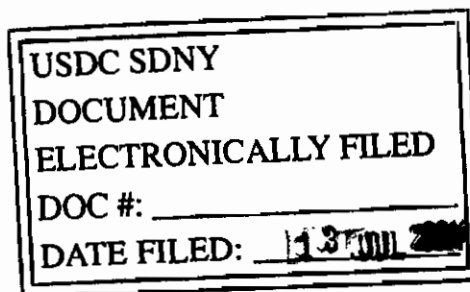
JESKA SAND, CHRISTOPHER SCHIFFER,
PATRIZZA JIMENEZ, CAROLINA KORTH,
and JESSICA LLONCH, on behalf of themselves
and all others similarly situated, and
SARAH SANDERS, individually,

Plaintiffs,

-against-

STEVEN GREENBERG and 230FA LLC d/b/a/
230 FIFTH AVENUE and 230 FIFTH AVENUE
ROOFTOP GARDEN,

Defendants.



08 Civ. 7840 (PAC)

STIPULATION AND
~~PROPOSED~~ ORDER

WHEREAS:

1. On November 16, 2009, plaintiffs accepted an offer of judgment made by defendants (the "Offer of Judgment");
2. On January 7, 2010, following litigation by the parties, the Court held that the Offer of Judgment did not include legal fees and costs to which the plaintiffs would be entitled pursuant to the Fair Labor Standards Act and/or the New York Labor Law;
3. On March 22, 2011, the Court entered an order (the "March 22 Order"), which, among other things, certified a class action, appointed Outten & Golden LLP ("Outten") as class counsel, granted plaintiffs' motion for preliminary approval of the sufficiency of the Offer of Judgment, adopted an approval process, ordered class notice, and scheduled a formal hearing for October 2011 in anticipation of entering final judgment;
4. Fox Rothschild, on behalf of defendants, has deposited \$850,000 (the "Fee and Cost Settlement Amount") into a special account at Cooley LLP to be held for payment of plaintiffs' legal fees and costs accrued through April 26, 2011 in accordance with the terms of this Stipulation and Order;

5. Outten has provided time and billing records to defendants' counsel, Fox Rothschild LLP ("Fox Rothschild"), to support plaintiffs' claim for fees and costs through April 13, 2011 and Fox Rothschild has reviewed those records;

6. The parties wish to resolve the issue of plaintiffs' attorney's fees and costs accrued through April 26, 2011 without further litigation;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

1. If a final judgment in accordance with the terms of the Offer of Judgment is entered in this case, then upon the Effective Date of Settlement, as that term is defined in the March 22 Order, Cooley LLP shall cause the Fee and Cost Settlement Amount, plus any interest that accrues on that amount while held in Cooley LLP's special account, to be paid to Outten in full satisfaction of all legal fees and costs incurred on behalf of plaintiffs in connection with this matter through April 26, 2011.

2. Fox Rothschild, on behalf of defendants, will pay the fees and costs of the Claims Administrator appointed pursuant to the March 22 Order.

3. Fox Rothschild, on behalf of defendants, will pay up to a maximum of \$20,000 for reasonable attorneys' fees and costs incurred by plaintiffs from April 27, 2011 through the Effective Date of Settlement in an amount to be determined by the Court. To the extent that the Court finds that defendants have taken any actions through counsel that unreasonably and vexatiously increase the legal fees and costs incurred by plaintiffs from April 27, 2011 through the Effective Date of Settlement, the Court may award reasonable attorneys' fees and costs in excess of \$20,000 for that period.

4. Each side will bear its own fees and costs incurred in connection with an appeal by any class member from any order or judgment of the District Court,

5. Defendants will not appeal the Court's decision of January 7, 2010 or from a final judgment entered in accordance with the terms of the Offer of Judgment as interpreted by the Court's January 7, 2010 and the Court's subsequent rulings.

In the event the Court does not enter final judgment in accordance with the terms of the Offer of Judgment as interpreted by the Court's January 7, 2010 and the Court's subsequent rulings, or in the event final judgment is entered in accordance with those terms and is appealed by a class member or members and is reversed, the Fee and Cost Settlement Amount, plus any interest that accrues on that amount while held in Cooley LLP's special account, shall be returned to Fox Rothschild, the terms of this Stipulation and Order specifying the amount of legal fees and costs to be paid shall be null and void, Plaintiffs retain the right to apply for all of their fees and costs incurred, including but not limited to fees and costs incurred on appeal; and this Stipulation, the Fee and Cost Settlement Amount, and the negotiations that led to this Stipulation, are not admissible in or relevant to Plaintiffs' fee and cost application, and may not be presented to the Court or referred to by Plaintiffs or Defendants in connection with Plaintiffs' fee and cost application. Dated: New York, New York

~~April~~ 15, 2011

OUTTEN & GOLDEN LLP

By: 

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and

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Attorneys for Fox Rothschild, LLP

13 JUL 2011

SO ORDERED.

